IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 95 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGWANSINH ALIAS BHAGABHAI DOLATSINH - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1, MS SADHANA SAGAR for Appellant(s) : 1,
MR HL JANI APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 04/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgment and order dated 16th January, 1999 passed by the learned Addl. Sessions Judge, Vadodara in Sessions Case No. 100 of 1998 whereby, the appellant was convicted for the offences punishable u/s. 302 of the Indian Penal Code [for short, “the IPC”] and Section 135 of the Bombay Police Act [for short, “the BP Act”]. For conviction u/s. 302 of the I.P.C., the appellant was sentenced to undergo imprisonment for life with fine of Rs.500/- and in default of payment of fine, rigorous imprisonment for a further period of two months. No separate sentence was imposed for conviction u/s. 135 of the BP Act. The appellant was also given the benefit of set-off.

2.0 The brief facts of the prosecution case are as under;

2.1 On 30.12.1997 at around 1200 hrs. one Bhailalbhai informed the complainant herein – Ganpatsinh Bhagwansinh that a scuffle was going on between deceased – Bhagwansinh Daulatsinh and the appellant, as

the deceased suspected that an illicit relationship existed between his wife and the appellant. Therefore, the complainant and his brother immediately proceeded towards the residence of the deceased where the said scuffle was said to have going on. When they reached the scene of offence, they noticed that a scuffle was going on between the deceased and the appellant and, during that process, the appellant inflicted several blows on the body of the deceased with a knife which he had brought along with him. On noticing the said incident, the complainant and his brother shouted, on account of which the appellant fled the scene of offence and a crowd gathered at the said place.

2.2 Thereafter, the complainant and other relatives of the deceased took the deceased to S.S.G. Hospital, Vadodara for necessary medical treatment. During the course of treatment, the deceased narrated the history of the incident to the Medical Officer, who was on duty at the relevant point of time. The said Medical Officer noted down the same in the medical case-papers of the deceased. Thereafter, the Medical Officer informed about

the incident to the Police Constable on duty in the Hospital who, in turn, informed about the same to the P.S.O. of Chaani Police Station, as the offence in question had taken place within the limits of Chaani Police Station. In the meanwhile, the deceased succumbed to the injuries at around 1645 hrs. on the same day.

2.3 Since on that day the P.I. of Chaani Police Station was on leave and the charge of said Police Station was under the P.I. of Jawaharnagar Police Station, the P.I. of Jawaharnagar Police Station went to S.S.G. Hospital for necessary investigation. After carrying out necessary preliminary investigation, a complaint was filed against the appellant on the same day, which came to be registered as I – C. R. No. 238 of 1997 with Chaani Police Station for offences punishable u/s. 302 of the IPC and u/s. 135 of the BP Act.

2.4 The Investigating Officer seized the clothes and other 'muddamal' articles from the dead body of the deceased. Inquest 'panchnama' was done. 'Marnottar' form was filled up and the dead body of the deceased was

sent for performing post-mortem along with a police 'yaadi'.

2.5 Further investigation was carried out and statements of several witnesses were recorded. 'Panchnama' of the scene of offence was done and 'muddamal' articles were collected. In the meanwhile, the appellant came to be arrested in the early morning hours of 31.12.1997.

2.6 On 01.01.1998, investigation into the alleged offence was handed over to the P.I. of Chaani Police Station. During the course of investigation, the appellant showed his willingness to produce the knife used in the commission of the alleged offence in question. Therefore, a primary 'panchnama' to that effect was done in the presence of 'panchas'. Thereafter, the Investigating Officer, the 'panchas' and the appellant went to the said place, where the appellant had hidden the knife in question, at the instance of the appellant himself, in a police vehicle. After reaching the said place, the Investigating Officer seized the 'muddamal' knife in the

presence of 'panchas' and a 'panchnama' to that effect was also drawn. The said 'muddamal' articles, viz. clothes & weapon – knife, were then sent to F.S.L. for examination. On receipt of the F.S.L. report, medical report and the PM Note, they were kept in the investigation file.

2.7 At the end of investigation, the Investigating Officer filed charge-sheet against the appellant before the Court of learned Judicial Magistrate First Class, Court No. 4, Vadodara. As the charges were exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the District & Sessions Court, Vadodara and the same was numbered as Sessions Case No.100 of 1998. Subsequently, the case was handed over to the learned Addl. Sessions Judge for disposing the same on merits. The learned Addl. Sessions Judge framed the charge and as the appellant pleaded not guilty to the said charge, trial was conducted.

3.0 To prove the guilt against the appellant, the prosecution has examined in all thirteen witnesses. PW – 1 Dr. Naranbhai Pujabhai Parmar at Exhibit – 8, PW – 2 Dr.

Kishor Pramodrai Desai at Exhibit – 10, PW – 3 Rameshbhai Gajesinh Parmar at Exhibit – 13, PW – 4 Shanabhai Raijibhai Parmar at Exhibit – 15, PW – 5 Kamalaben Bhagwansinh Parmar at Exhibit – 16, PW – 6 Sumitraben Hukabhai Parmar at Exhibit – 17, PW – 7 Parvatiben Raijibhai Gohil at Exhibit – 18, PW – 8 Shankarsinh Bhagwansinh at Exhibit – 19, PW – 9 Harisinh Ahmedsinh Gohil at Exhibit – 23, PW – 10 Shantilal Babulal Parmar at Exhibit – 24, PW – 11 Bauddin Udaisinh Rathod at Exhibit – 28, PW – 12 Kantilal Jagannath Vairagi at Exhibit – 30, PW – 15 Fatehsinh Gambhirsinh at Exhibit – 31.

3.1 It appears that the Court below has committed an error in not properly numbering the total number of prosecution witnesses, inasmuch as after examining the P.I. of Jawaharnagar Police Station, one – Kantilal Jagannath Vairagi as PW – 12 at Exhibit – 30, the Court below has examined the Police Constable on duty at S.S.G. Hospital, Vadodara, one – Fatehsinh Gambhirsinh as PW – 15 at Exhibit – 31 instead of PW – 13.

3.2 The prosecution has also relied upon several

documentary evidence and, more particularly, evidence in the form of complaint at Exhibit – 14, the medical case-papers of the deceased at Exhibit – 9, discovery 'panchnama' at Exhibit – 29, F.S.L. report at Exhibit – 26 and the PM Note of the deceased at Exhibit – 11.

3.3 On submission of the closing 'purshis', the learned Addl. Sessions Judge recorded the further statement of the appellant u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge convicted the appellant and imposed sentence as narrated in the earlier part of this judgment. Hence, the present appeal.

4.0 Ms. Sadhana Sagar learned Advocate for the appellant has submitted that the Court below has committed serious error in not properly appreciating the circumstances under which the alleged offence is said to have taken place. She has submitted that the act committed by the appellant was one of self-defence, inasmuch as the scuffle had taken place at the instance of

the deceased himself since the deceased suspected that the appellant had illicit relationship with his wife. Learned Advocate has, therefore, submitted that considering the facts of the case, the appellant cannot be held guilty for the alleged offence in question.

4.1 Learned Advocate has requested that if this Court comes to the conclusion that the appellant is found to be guilty for the alleged offence in question, then the Court may reduce the sentence as awarded by the trial Court considering the peculiar facts and circumstances of the case.

5.0 Mr. H. L. Jani learned APP has submitted that the Court below has convicted the appellant for the offence in question after duly appreciating the entire oral as well as documentary evidence on record. He has submitted that the oral evidence on record in the form of depositions of the mother / brother of the deceased and the Doctor who has examined the deceased, clearly lead us to believe that the appellant has committed the offence in question.

5.1 Learned APP has further submitted that the documentary evidence on record in the form of complaint at Exhibit – 14, the medical case-papers of the deceased at Exhibit – 9, the discovery 'panchnama' at Exhibit – 29, the F.S.L. report at Exhibit – 26 and the PM Note at Exhibit – 11 clearly point towards the guilt of the appellant. He has, therefore, submitted that once it is clearly established that the appellant herein is the author of the heinous crime in question, this Court should not interfere with the impugned judgment and order and also should not take any lenient view by reducing the quantum of sentence as awarded by the Court below. Hence, the appeal deserves to be dismissed.

6.0 We have heard learned counsel for the respective parties and perused the entire oral as well as documentary evidence on record. On a bare reading of the complaint at Exhibit – 14, it transpires that on the date of incident, at around 1200 hrs., when the complainant and his brother reached the scene of offence, they noticed that a scuffle was going on between the appellant and the deceased and that the appellant had a knife in one of his

hands with which he inflicted several blows on the body of the deceased. It further transpires from the complaint that after inflicting the said injuries, the appellant fled the scene of offence and a crowd gathered at the said place.

6.1 Thus, on a plain reading of the complaint at Exhibit – 14, it appears that the complainant as well as his brother are eye-witnesses to the alleged incident in question. Therefore, the question that is now required to be considered by this Court is as to whether the averments made in the complaint at Exhibit – 14 are believable or not ? Before proceeding further, it would be relevant to state that for reasons best known to the prosecution, the brother of the complainant – Raisinh Gajesinh, whose narration has been made in the complaint at Exhibit – 14, has not been examined as a witness before the Court below. Now, whether the non-examination of this witness as a prosecution witness shall cause any damage to the prosecution case or not is to be scrutinized.

7.0 The complainant has been examined as PW – 3 at Exhibit – 13. In his deposition, PW – 3 has narrated the

same facts as has been narrated by him in the complaint at Exhibit – 14. Nothing incriminating has come out from the cross-examination of this witness which may lead us to believe his evidence to be untrue or unreliable.

8.0 The prosecution has examined the mother of the deceased as PW – 5 at Exhibit – 16. In her deposition, PW – 5 has stated that on the date of incident, the appellant came to their home and attacked the deceased from behind while the deceased was doing some fencing work and inflicted several blows with a knife, which he had brought along with him, on different parts of the body of the deceased.

8.1 The evidence led by PW – 5 at Exhibit – 16 is consistent with the averments made in the complaint at Exhibit – 14 as also the evidence led by PW – 3 at Exhibit – 13, so far as it relates to the specific role played by the appellant in the commission of the alleged offence in question. Moreover, the presence of this witness at the scene of offence, at the relevant point of time, was a natural one, as she is the mother of the deceased. Nothing

contrary has come out from the cross-examination of this witness which may lead us to believe the evidence led by her to be untrue or unreliable.

9.0 Thus, from the evidence led by PW – 3 Rameshbhai Gajesinh Parmar at Exhibit – 13 and PW – 5 Kamlaben Bhagwansinh Parmar at Exhibit – 16, it is clearly established that on the date of incident, the appellant went to the house of the deceased and attacked the deceased from behind while the deceased was doing some fencing work. During the ensuing scuffle, the appellant took out a knife, which he had brought along with him, and inflicted several blows with the said knife on the person of the deceased. Hence, it could be concluded that both these witnesses are eye-witnesses to the incident in question and the presence of the appellant has been proved beyond doubt. In that view of the matter, the contention raised by learned Advocate for the appellant that the alleged offence in question was an act of self-defence deserves to be rejected.

10.0 The prosecution has examined the brother of the

deceased as PW – 8 at Exhibit – 19. The said witness has deposed that on the date of incident, when he had reached home at around 1400 hrs., the deceased, who was lying on the ground in a badly bruised condition, had informed him that the appellant had inflicted four knife blows on him and that the appellant should get punishment for his act. The said witness has also been cross-examined by the other side. However, nothing incriminating has come out from his cross-examination which may lead us to believe the evidence led by him to be untrue or unreliable. Thus, from the deposition of this witness also, the role played by the appellant in the commission of the alleged offence in question is proved beyond doubt.

11.0 The prosecution has examined the Doctor who has given necessary treatment to the deceased when the deceased was brought to S.S.G. Hospital, Vadodara on 30.12.1997 as PW – 1 at Exhibit – 8. In his deposition, PW – 1 has categorically stated that during the course of treatment, when a specific question was put to the deceased as regards the injuries sustained by him, the

deceased had informed him that the said injuries were caused by the appellant by the infliction of knife blows on 30.12.1997. The said fact has been noted down by this witness in the medical case-papers of the deceased, which have been produced on record vide Exhibit – 9.

11.1 Thus, from the evidence led by this witness, it is clearly established that the deceased sustained the injuries in question, on account of the infliction of knife blows by the appellant. The said fact is also supported by the post-mortem notes of the deceased at Exhibit – 11.

12.0 The role played by the appellant has been categorically narrated in the two dying declarations, firstly, by way of history before PW – 8 at Exhibit – 19 and secondly, before the Doctor, who has been examined as PW – 1 at Exhibit – 9. There are no material contradictions or inconsistencies in the said two dying declarations which may warrant any corroboration. We find both the dying declarations to be consistent all throughout and, accordingly, hold the same to be wholly reliable, trustworthy and free from all doubts.

13.0 The law on the subject is well settled. In a recent decision of the Hon'ble Apex Court in the case of ***Smt. Shakuntala v/s. State of Haryana*** reported in ***2007(5) Supreme Today 668***, the Apex Court has narrated the principle on which dying declaration can be admitted in evidence. It has been held therein that dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. However, it cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated.

13.1 In the case on hand, we find the dying declarations to be wholly trustworthy and free from all doubts and are of the opinion that this is a fit case where conviction can be based on it, without any corroboration. Hence, even if the prosecution has not examined the brother of the complainant as a witness, who might have been a key-witness, the same shall not have any bearing on the final outcome in this appeal, in view of the substantial oral as well as documentary evidence on

record.

14.0 The prosecution has examined PW – 10 at Exhibit – 24 & PW – 11 at Exhibit – 28 in order to prove the discovery ‘Panchnama’. However, both these witnesses were declared as 'hostile' by the Court below. The Investigating Officer has been examined as PW – 12 at Exhibit – 30. In his deposition, the said witness has deposed that during the course of interrogation, the appellant showed his willingness to produce the weapon – knife used in the commission of the offence in question and, therefore, he prepared a primary ‘panchnama’ to that effect in the presence of ‘panchas’. He has further deposed that, thereafter, the ‘panchas’, the appellant and he himself went to the place in a police vehicle, where the said knife was hidden by the appellant. On reaching the said place, the appellant himself produced the weapon – knife and the same was seized by him by way of ‘panchnama’ at Exhibit – 29. Thus, from the evidence discussed hereinabove, it is clear that the prosecution has been able to prove the discovery 'panchnama' at Exhibit – 29 or, in that matter, the guilt of the appellant.

15.0 So far as the aspect of homicidal death is concerned, the same was not disputed before the Court below and has not been disputed even before this Court. In that view of the matter, we are not discussing the same in detail and, accordingly, have no hesitation in holding that the deceased died a homicidal death. The other evidence on record in the form of the F.S.L. report also support the case of the prosecution.

16.0 In view of the above discussion, we are of the considered opinion that the prosecution has succeeded in proving beyond doubt the guilt against the appellant. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below and, hence, find no reasons to interfere in this appeal. We also do not find it necessary to take any sympathetical view in the matter looking to the manner in which the heinous crime was committed.

17.0 In the result, the Appeal is dismissed. Office is directed to send the Records & Proceedings to the trial

Court concerned forthwith.

[R. P. Dholakia, J.] [K. S. Jhaveri, J.]

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